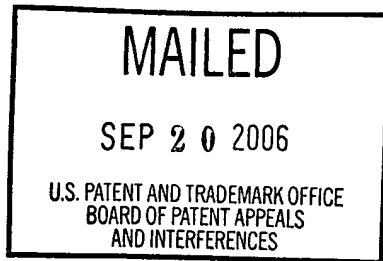


The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH B. FULLER



Appeal No. 2006-0884
Application No. 09/944,922
Technology Center 3700

ON BRIEF

Before OWENS, BAHR and LEVY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1-5.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a trimmer having a handle, a base supporting a motor and cutting element, two unidirectional wheels on the front of the base and a multidirectional wheel on the rear of the base, and a universal joint connecting the handle to the base. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The examiner relies upon the following as evidence of unpatentability:

Winslow	US 2,038,697	Apr. 28, 1936
Moore	US 4,107,901	Aug. 22, 1978
Yamada	US 4,179,805	Dec. 25, 1979
Knox	US 5,970,694	Oct. 26, 1999

The following rejections are before us for review.

Claims 1, 2 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Winslow in view of Moore.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Winslow in view of Moore and Yamada.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Winslow in view of Moore and Knox.

Rather than reiterate in their entirety the conflicting viewpoints advanced by the examiner and the appellant regarding this appeal, we make reference to the examiner's answer (mailed November 2, 2005) for the examiner's complete reasoning in support of the rejections and to the appellant's brief (filed July 21, 2005) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art, and to the respective positions articulated by the appellant and the examiner. On the basis of this review, we make the following determinations.

Winslow's invention is directed to a universal joint, permitting rotation about two orthogonal axes, interposed between the handle 10 and the body or casing of a manually operated tool "of the character of a vacuum cleaner, sweeper or other mechanism operating over various surfaces, supported on rolling or sliding supports, and actuated by means of a handle controlled by an operator" (col. 1, ll. 4-8), with a "lawn mower" (col. 1, ll. 53-54) being expressly included as a device of the sort contemplated by Winslow for application of this invention. The base or body 1 of the device is provided with two unidirectional wheels 3 at the front thereof and a wheel 4 at the rear thereof. The examiner reasons that the rear wheel 4 of Winslow is a multidirectional wheel, "since a user would be forced to drag the wheel (4) across the lawn in order to get from the position shown in Figure 2 to that of Figure 3 if the structure were any otherwise" (answer, p. 4) and the appellant does not dispute this contention.¹

¹ The examiner alternately relies on Hampton (US Pat. No. 5,806,867) for a suggestion to provide multidirectional wheels on a wheeled device steered by a handle. We have not considered Hampton in our review of this rejection, because (1) the examiner has not positively included it in a statement of a rejection and (2) appellant has not challenged the sufficiency of Winslow in this regard. Where a

Winslow's stated purpose for providing such a universal joint connection is similar to that of appellant. Specifically, Winslow's objective is to facilitate the manner of changing direction of the lawn mower or the like tool. See col. 1, l. 52, to col. 3, l. 12.

As recognized by the examiner, Winslow does not describe the details of the lawn mower or the like and, in particular, does not disclose a cutting element comprising at least one line, as called for in claim 1. To overcome this deficiency, the examiner turns to Moore. Moore points out that rotary steel blade type lawn mowers, though popular because of their suitability to areas where grass is tall or thick or both, are inherently dangerous to persons and property (col. 1, third para.) and discusses the advantages of the type of vegetation cutter that employs one or more flexible non-metallic cords as cutting elements (the "Weed Eater®"). Specifically, the Weed Eater® cutting element can be operated in closer proximity to walls, fences and trees without damaging them and, more importantly, is safer to operate than a lawn mower with rotating steel blades (para. bridging cols. 2 and 3).

Moore also discusses the difficulties in incorporating a non-metallic cord type cutter directly into a lawn mower. In particular, the tendency of the cord to deflect both laterally and downwardly, causing a warping effect that is not

reference is relied on to support a rejection, whether or not in a "minor capacity," there would appear to be no excuse for not positively including the reference in the statement of rejection. *In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970).

problematic when edging or trimming but tends to produce swaths having convex configurations when cutting large areas as a lawn mower is intended to do, is extremely undesirable from an aesthetic standpoint in mowing applications where the objective is to level the grass to create a carpet-like effect (col. 3, ll. 37-60). The details of Moore's invention are directed to overcoming those difficulties, by providing a tube 12 to confine the cutting cord 11 in a desired cutting configuration, to produce a lawn mower having one or more non-metallic cords as the cutting element.

Having reviewed the disclosures of Winslow and Moore as a whole, we agree with the examiner that their combined teachings would have provided suggestion to one of ordinary skill in the art at the time of appellant's invention to utilize a lawn mower having a non-metallic cord type cutting element arrangement as taught by Moore with the universal joint connection to the handle as taught by Winslow, as such a mower would offer both the advantage of maneuverability addressed by Winslow and the improved safety addressed by Moore. The difficulties with cord-type cutting elements overcome by Moore to achieve the safer lawn mower would not have dissuaded a person of ordinary skill in the art from using such a cutting element on the Winslow lawn mower, as alleged by appellant on page 5 of the brief, inasmuch as Moore's disclosure would have instructed such a person how to overcome these difficulties and conveyed that the safety advantages of such a cutting element outweigh any added complexity in incorporating it into a lawn mower.

The appellant also argues that one of skill in the art would be led away from a handle for lateral movement which is contrary to the intended use of the mower upon which it is attached (brief, p. 4) and that Moore clearly teaches that the mechanism of use for a string trimmer is in a forward direction and therefore one would not be expected to consider changing the handle to one which deviates from this typical one (brief, p. 6). We do not find this argument persuasive.

Specifically, the disclosure of Moore to which appellant apparently refers is that “[t]he lawn mower 2 will be moved progressively in a forward manner so as to cut a suitable swath across the lawn or greensward” (col. 8, ll. 1-3). The fact that a swath is cut by moving the mower progressively in a forward manner in no way implies or suggests that the mower need not be turned or moved laterally in the manner addressed by Winslow, such that a handle connected to the mower base via a universal joint would be desirable. Indeed, most lawns have dimensions that require the cutting of several parallel and overlapping swaths. It is inconceivable that such a feat could be accomplished with a lawn mower of conventional dimensions, as contemplated by both Moore and Winslow, without turning the mower in some manner to move from the path of one swath to another.

In light of the above, the rejection of claim 1 as being unpatentable over Winslow in view of Moore is sustained. The appellant has not separately argued the patentability of claims 2 and 4 apart from claim 1, thereby allowing these claims to stand or fall with representative claim 1 (*see In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); *In re Wood*, 582 F.2d 638, 642, 199 USPQ

137, 140 (CCPA 1978)). It follows that the like rejection of claims 2 and 4 is also sustained.

The rejection of claim 5 as being unpatentable over Winslow in view of Moore and Knox is also sustained, as the appellant has not argued this rejection apart from the rejection of claims 1, 2 and 4 with any specificity. We additionally note that Moore also discloses an electric motor 6 (col. 7, l. 50), the feature for which the examiner has relied upon Knox, for rotating the cutting element.

The rejection of claim 3 as being unpatentable over Winslow in view of Moore and Yamada, however, is not sustained. Yamada discloses a pair of lower grips on the handle of a trimmer designed to have its weight fully supported by the operator. The lawn mower of Winslow and Moore, however, is supported by wheels and is not supported and manipulated in the manner of the trimmer of Yamada. We therefore agree with the appellant (brief, p. 7) that one of ordinary skill in the art would not have been inclined to add such a lower grip on the handle of Winslow in the absence of hindsight impermissibly gleaned from appellant's disclosure.

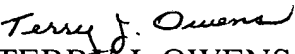
CONCLUSION


To summarize, the decision of the examiner to reject claims 1-5 is affirmed as to claims 1, 2, 4 and 5 and reversed as to claim 3.


Appeal No. 2006-0884
Application No. 09/944,922

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART


TERRY J. OWENS
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge


STUART S. LEVY
Administrative Patent Judge

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